

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NICHOLAS BENAVIDES,

Plaintiff,

vs.

Civil No. 18-25 KRS

**NANCY A. BERRYHILL, Acting
Commissioner of the Social Security
Administration,**

Defendant.

**ORDER FOR THE AWARD OF ATTORNEY FEES PURSUANT
TO THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(D)**

THIS MATTER is before the Court on the Stipulated Motion for Attorney Fees Pursuant to the Equal Access to Justice Act filed on November 14, 2018. [Doc. 24]. The parties have stipulated to EAJA fees in the amount of \$7,095.30 for work performed in 2018. The Court being otherwise fully advised in the premises, **FINDS** that the motion is well-taken and will be **GRANTED**.

IT IS THEREFORE ORDERED THAT the motion is **GRANTED**, and **Plaintiff is awarded \$7,095.30 in attorney fees** pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). *See Astrue v. Ratliff*, 560 U.S. 586, 591-93 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

Payment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to EAJA fees in connection with this action. The parties further agree that the EAJA award is without prejudice to Plaintiff's attorney's right to seek

attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. If Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.



THE HONORABLE KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE